

REDACTED DECISION – DK# 15-302 RPD-W

**BY: GEORGE V. PIPER, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON DECEMBER 21, 2015
ISSUED ON DECEMBER 23, 2015**

SYNOPSIS

TAXATION

**WEST VIRGINIA OFFICE OF TAX APPEALS
HEARING PROCEDURES**

In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the Petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R § 121-1-63.1 (2003).

TAXATION

PERSONAL INCOME TAX

WEST VIRGINIA ADJUSTED GROSS INCOME OF RESIDENT INDIVIDUAL

The statutory law of the State of West Virginia explicitly excludes from state income tax those pensions and annuities paid to the retired West Virginia police officers, West Virginia firemen, West Virginia state police and West Virginia deputy sheriffs. *See* W. Va. Code Ann. § 11-21-12(c)(6) (West 2010).

WEST VIRGINIA OFFICE OF TAX APPEALS

CASE LAW

A person who proves that he or she worked as a federal law enforcement officer, and did not qualify to receive social security benefits while working in that job, may exclude all of his or her federal retirement income from that job for purposes of the West Virginia personal income tax. *See* Dodson v. Palmer, Civil Action No. 00-C-AP-10 (Monongalia County Cir. Ct. W. Va. 2000).

WEST VIRGINIA OFFICE OF TAX APPEALS

CASE LAW

The Federal Office of Personnel Management has defined a federal law enforcement officer to mean an employee whose job duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. *See* 5 C.F.R. § 831.902 (2011); *See* also 5 C.F.R. §§ 831.901 and 831.903 (2011).

WEST VIRGINIA OFFICE OF TAX APPEALS
CONCLUSION OF LAW

Petitioner has carried the burden of proof, with respect to the issue of whether he is entitled to the same treatment as the taxpayer in the *Dodson* ruling, in that it has been established as to his retirement eligibility as a qualified law enforcement officer whose retirement system, being separate and apart from the social security retirement program, does not qualify him to receive social security benefits.

FINAL DECISION

On July 13, 2015, the Tax Account Administration Division of the West Virginia State Tax Commissioner's office, (hereafter Respondent), denied Petitioner's Schedule M modification on his 2011, 2012 and 2013 personal income tax returns. Thereafter, by certified mail received September 4, 2015, the Petitioner timely filed with this Tribunal, the West Virginia Office of Tax Appeals, a petition for refund. *See* W. Va. Code Ann. §§ 11-10A-8(2) and 11-10A-9(a)-(b) (West 2010).

During the initial telephonic status conference, the parties agreed that, in lieu of an evidentiary hearing, the matter would be submitted for decision based solely upon documents provided by the Petitioner.

FINDINGS OF FACT

1. Petitioner served as a law enforcement officer with the Federal Bureau of Investigation for twenty-seven (27) years, until his retirement in 1989.

2. During his tenure, he performed duties commensurate with his job as a federal law enforcement officer in that he was armed with a handgun, investigated crimes against the United States, obtained warrants, made arrests, etc.

3. Petitioner, while employed by the Federal Bureau of Investigation, did not pay social security taxes and, therefore, cannot receive social security benefits.

4. On December 21, 2015, this Tribunal ordered the parties to stipulate the amount of the tax refund applicable, for tax years 2011, 2012, 2013 and 2014. In due course, the parties agreed that, should the Petitioner prevail in this matter, he would be due a refund in the amount of \$_____.

DISCUSSION

The sole issue for determination is whether the Petitioner, a retired law enforcement officer with the Federal Bureau of Investigation, who could not collect social security benefits, may exclude his retirement pension for West Virginia personal income tax purposes, pursuant to the holding in *Dodson v. Palmer*, Civil Action No. 00-C-AP (Monongalia County, WV, 2000).

The statutory law of the State of West Virginia explicitly excludes from state income tax, those pensions and annuities paid to retired West Virginia police officers, West Virginia firemen, West Virginia state police, and West Virginia deputy sheriffs. *See* W. Va. Code Ann. § 11-21-12(c)(6) (West 2010).

According to the ruling of the Circuit Court of Monongalia County, West Virginia, in *Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (2000), a person who proves that he or she worked as a federal “law enforcement officer,” and did not qualify to receive social security benefits while working in that job, may exclude all of his or her federal retirement income from that job for purposes of the West Virginia personal income tax.

For purposes of establishing special retirement eligibility, the Federal Office of Personnel Management has defined a, “federal law enforcement officer,” to mean “an employee whose job duties are primarily the investigation, apprehension, or detention of individuals suspected of or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position.” *See* 5 C.F.R. §831.902 (2011); *See* 5 C.F.R. §§ 831.901 and 831.903 (2011). The federal government

has also distinguished such “law enforcement officers” from other civil service employees, including military personnel, in that the federal law enforcement officers’ retirement is calculated using an altogether different formula from the one used to calculate other federal civil service employees’ retirement benefits.

The documents submitted by the Petitioner in this matter, show that Petitioner was a special agent of the Federal Bureau of Investigation, with twenty-seven (27) years of service, and that his duties were commensurate with his job as a law enforcement officer.

Petitioner’s retirement system is separate and apart from the social security retirement insurance program and Petitioner did not pay social security taxes while employed and, therefore, cannot receive social security benefits.

Petitioner, as a qualified law enforcement officer, is therefore entitled to exclude his law enforcement retirement benefits from West Virginia personal income tax pursuant to the ruling in *Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (2000).

CONCLUSIONS OF LAW

Based upon all the above, it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the Petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R § 121-1-63.1 (2003).

2. The statutory law of the State of West Virginia explicitly excludes from state income tax those pensions and annuities paid to the retired West Virginia police officers, West

Virginia firemen, West Virginia state police and West Virginia deputy sheriffs. *See* W. Va. Code Ann. §11-21-12(c)(6) (West 2010).

3. A person who proves that he or she worked as a federal law enforcement officer, and did not qualify to receive social security benefits while working in that job, may exclude all of his or her federal retirement income from that job for purposes of the West Virginia personal income tax. *See Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (Monongalia County Cir. Ct. W. Va. 2000).

4. The Federal Office of Personnel Management has defined a federal law enforcement officer to mean an employee whose job duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. *See* 5 C.F.R. § 831.902 (2011); *See* 5 C.F.R. §§ 831.901 and 831.903 (2011).

5. Petitioner has carried the burden of proof, with respect to the issue of whether he is entitled to the same treatment as the taxpayer in the *Dodson* ruling, in that it has been established as to his retirement eligibility as a qualified law enforcement officer whose retirement system, being separate and apart from the social security retirement program, does not qualify him to receive social security benefits.

DISPOSITION

WHEREFORE, it is the Final Decision of the West Virginia Office of Tax Appeals that Petitioner's petition for refund of West Virginia personal income tax for the tax years 2011, 2012, 2013 and 2014 is **GRANTED** to reflect that a refund is due of \$_____.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
George V. Piper
Administrative Law Judge

Date Entered